IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

MFA.No. 610 of 2000(A)

O.A.38/1998 OF FOREST TRIBUNAL, KOZHIKODE.
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APPELLANTS/RESPONDENTS IN THE O.A:
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1. **THE STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT OF KERALA, TRIVANDRUM.**

2. **THE CUSTODIAN OF FOREST, NATIONALISED FORESTS, OLAVAKKODE, PALAKKAD.**

BY SPL. GOVERNMENT PLEADER (FORESTS) SRI. M.P. PRAKASH.

RESPONDENT/APPLICANT IN THE O.A:

SRI. KONGAD THIRUMANTHAM KUNNU DEVASWOM,
KONGAD BY ITS HERIDITARY TRUSTEE,
SRI. M. VASUDEVAN NAMBOODIRIPAD,
BHAGAVATHY MADHOM, KONGAD,
PALAKKAD.

BY ADV. SRI.M.A.T. PAI.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 3367/2000 IN M.F.A. NO. 610/2000

DISMISSED

SD/- J.B.KOSHY, JUDGE.

27/06/2007. **SD/- K.P.BALACHANDRAN, JUDGE.**

//TRUE COPY//

prv.

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 610 of 2000

JUDGMENT

Koshy, J.

The respondent in this case, a Devaswom represented by its hereditary Trustee, approached the Forest Tribunal when attempt was made by the Forest Department to stop the cultivation, holding that the scheduled area in the application is vested with the Government in view of Section 3(1) of the Kerala Private Forests (Vesting and Assignment) Act (hereinafter referred to as 'the Act'). Section 3(1) of the Act reads as follows:

> "Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of sub-sections (2) and (3) with effect on and from the appointed day, the ownership and possession of all private forests in the

> State of Kerala shall by virtue of this Act, stand transferred to and vested in the Government free from all encumbrances and the right, title and interest of the owner or any other persons in any private forest shall stand extinguished."

Therefore, all private forests are vested with the Government on the relevant date. Even without a notification, if it is a private forest, it is automatically vested under Section 3(1) of the Act. Section 2(f) defines private forest as follows:

> "(1) in relation to the Malabar District referred to in sub-section (2) of Section 5 of the States Re-organisation Act, 1956 (Central Act 37 of 1956)-
>
> (i) any land to which the Madras Preservation of Private Forests Act, 1949 (Madras Act XXVII of 1949), applied immediately before the appointed day excluding-

(A) lands which are gardens or nilams as defined in the Kerala Land Reforms Act, 1963 (1 of 1964).

(B) lands which are used principally for the cultivation of tea, coffee, cocoa, rubber, cardamom or cinnamon and lands used for any purpose ancillary to the cultivation of such crops or for the preparation of the same for the market.

Explanation:- Lands used for the construction of office buildings, godowns, factories, quarters for workmen, hospitals, schools and playgrounds shall be deemed to be lands used for purposes ancillary to the cultivation of such crops;

(C) lands which are principally cultivated with cashew or other fruit bearing trees or are principally cultivated with any other agricultural crop and

(D) sides of buildings and lands appurtenant to and necessary for the convenient enjoyment or use of, such buildings;

(ii) any forest not owned by the Government, to which the Madras Preservation of Private Forests Act, 1949 did not apply, including waste lands which are enclaves within wooded areas.

(2) in relation to the remaining areas in the State of Kerala any forest not owned by the Government including waste lands which are enclaves within wooded areas.

Explanation:- For the purposes of this clause, a land shall be deemed to be a waste land notwithstanding the existence thereon of scattered trees or shrubs."

The area in question was situated under the old Malabar District and the Madras Preservation of

Private Forest Act (MPPF Act) was applicable to all the forests in Malabar District and south Kanara, having a contiguous area, exceeding 100 acres. Forest is defined under Section 2(a) as follows:

> "**Forest**" includes waste or communal land containing trees and shrubs, pasture land and any other class of land declared by the Provincial Government to be a forest by notification in Fort St.George Gazette or in Kerala Government Gazette.
>
> **Explanation**:- For the purpose of this clause, 'communal land' means any land of the description mentioned in sub-clause (a) or sub-clause(b) of clause (16) of Section 3 of the Madras Estates Land Act, 1908 (Madras Act 1 of 1908)."

2. It is the contention of the respondent that it was not a private forest and therefore, it will not vest with the Government. There is no notification published in Kerala Government Gazette

or in Fort St.George Gazette notifying this area under MPPF Act. Only forest in Malabar area will come within the definition of Kerala Act. It is true that once the Forest Department demarcated the area, it is for the claimants to prove that it was not a private forest. To prove that the claimants adduced evidence to show that the area was described as 'paramba' in the old records. Annuity payments were made to the Land Board, as can be seen from Exhibit A1 and Exhibits A6 to A10 shows that the area in question was given for cultivation to different tenants on yearly basis to show that it was cultivated even before the appointed day. Exhibit A4 certificate issued by the Village Officer shows that it was not a private forest. It is true that the certificate issued by the Village Officer may not bind the Forest Department. But, it is one of the relevant circumstances that has to be looked into. The Village Officer certified that the area in question is not considered as private

forest. Exhibit A2 shows that these areas are called as 'paramba' and not as forest or 'malavaram'. We also see from the definition of Forest in MPPF Act that it should be notified as an area in Fort St.George Gazette or in Kerala Gazette. The appellant/State did not produce any notification showing that it was published in Fort St.George Gazette or in Kerala Gazette. Negative evidence cannot be produced by the appellant, if no notification is published under the MPPF Act. But, a sketch was produced by the appellant showing that it included sixty hectares of land, but fifty five acres were already exempted as cultivated area. So, the Tribunal found that if fifty five acres were cultivated according to the sketch, then there is no contiguous area of 100 acres and therefore, it will not be covered by the MPPF Act. In any event, the State did not produce any evidence to show that it is a notified area under the MPPF Act. The original application was filed in 1998. so

far, no such notification was produced. So, coupled with the fact that there was evidence to show that the area in question was cultivated during the relevant date, when the Act came into force and considering the fact that the village records showed that it was 'paramba' and the Village Officer certified that it is not a private forest. We see no ground to interfere in the order of the Tribunal, considering the fact that there is no notification stating it as forest land under the MPPF Act and even from the sketch produced more than fifty acres were already exempted. Claimants were able to prove that it is not a private forest. The Commission Report also shows that this area was held as 'paramba'. There was two scheduled properties. The first one is in Sy.No.394/1. According to the Commissioner, the property is a paramba having a slight downward slope from North to South and the approach to the property is through a mud road of approximately eight feet wide

on its northern boundary. The Forest Department put a notice board stating that it is demarcated by it. It is also stated that there were five Veeti trees and ten Teak trees in the area. In the vast area presence of such trees is seen in Government land also. Commissioner was deputed in 1998. All other trees mentioned in the commission report were subsequently planted after the relevant date by the Forest Department. Regarding the second item of property, there cannot be any dispute. It is covered under Sy.No.394/2. It is also a paramba. Four sides of the above property are not forest and that property was not demarcated. Considering the commission report also the Tribunal found that these are not private forests on the relevant date. In the above circumstances, we are of the view that the findings of the Tribunal are based on evidence and no grounds are made out to interfere with the same. At the same time, we make it clear that the respondent shall not destroy the forest trees or

any of the tress planted by the Forest Department and that should be protected by the respondent Devaswom, so that there will not be any ecological disturbances.

The appeal is dismissed with the above observations.

(J.B.Koshy, Judge)

27th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 610 of 2000

JUDGMENT

27th June, 2007